a continuous intention to revoke, in spite of the absence of positive proof that any of the declarations were made shortly after the act. *Waterman* v. *Whitney*, 11 N. Y. 157. See 3 WIGMORE, EVIDENCE, § 1737. It is difficult, however, to understand how this reasoning is open to the Illinois court, since it has expressly repudiated any mental state exception to the hearsay rule, at least in non-testamentary cases. *Siebert* v. *People*, 143 Ill. 571, 32 N. E. 431; *Chicago & E. I. R. Co.* v. *Chancellor*, 165 Ill. 438, 46 N. E. 269. The only other explanation for the principal case would seem to be a special hearsay exception, or at least a peculiar treatment of testamentary cases, taking its origin from the practice of the ecclesiastical courts. See *Marston* v. *Roe*, 8 A. & E. 14, 56; *Sugden* v. *Lord St. Leonards*, L. R. 1 P. D. 154, 241; *In re Skelton's Will*, 143 N. C. 218, 55 S. E. 705.

EVIDENCE — DYING DECLARATIONS — ADMISSIBILITY IN CIVIL SUITS. — In an action of contract by an executor, the court rejected the plaintiff's offer to prove his testator's dying declaration as to the terms of the agreement in controversy. *Held*, that the declaration should have been admitted. *Thurston* v. *Fritz*, 138 Pac. 625 (Kan.).

For a discussion of the historical basis and of the expediency of so extending the dying declaration exception, see this issue of the REVIEW at p. 739.

EVIDENCE — SIMILAR FACTS AND OCCURRENCES — OTHER CRIMINAL ACTS TENDING TO PROVE THE ACT CHARGED. — The defendant was indicted for the murder of a young girl who had been killed in the course of an attempt to commit what appeared to be an unnatural sexual crime upon her. A witness testified that on the day of the murder the defendant had said to him, "I want you to watch for me like you have been doing the rest of the Saturdays." He was then permitted to testify that he had watched on previous occasions, while the defendant had taken other girls to his office under similar circumstances. He further testified that he had seen the deceased go to the office, and subsequently he had helped the defendant remove her body; that at this time the defendant had said to him, "Of course you know I ain't built like other men." In explanation of this statement, the witness testified, that on several of the prior occasions he had seen the defendant in unnatural intercourse with other women. To the admission of the testimony as to what took place on these previous occasions the defendant excepted. *Held*, that the evidence is admissible. *Frank* v. *State*, 80 S. E. 1016 (Ga.).

It is a fundamental principle of the common law that one accused of crime must be tried only for the offense charged without reference to his past life or character. *Paulson* v. *State*, 118 Wis. 89, 98, 94 N. W. 771, 774; *People* v. *Shea*, 147 N. Y. 78, 99, 41 N. E. 505, 511. Evidence of other criminal acts which have no logical tendency to prove the crime charged, except as showing that the defendant has a disposition to commit such offenses, is inadmissible. *State* v. *Lapage*, 57 N. H. 245; *People* v. *Sharp*, 107 N. Y. 427, 14 N. E. 319; *The King* v. *Rodley*, [1913] 3 K. B. 468. But where the evidence of other acts is relevant to any material point in issue, otherwise than through the inference to character, it is immaterial that the other acts are criminal. *State* v. *Lapage*, 57 N. H. 245, 288; Parker, C. J., in *People* v. *Molineux*, 168 N. Y. 264, 339, 61 N. E. 286, 312; *Makin* v. *Attorney General*, [1894] A. C. 57. See also, 26 HARV. L. REV. 656. So, where the other criminal acts form part of the same general design, of which the act charged is but another manifestation, evidence of the defendant's connection with the other acts will be competent to show his connection with the crime of which he is accused. *Commonwealth* v. *Robinson*, 146 Mass. 571, 16 N. E. 452; *State* v. *Eastwood*, 73 Vt. 205, 50 Atl. 1077; *People* v. *Zucker*, 20 App. Div. 363, 46 N. Y. Supp. 766; *Affirmed*, 154 N. Y. 770, 49 N. E. 1102. But it seems scarcely possible to prove a general plan to commit sexual

offenses. Where, however, as in the principal case, there is a series of acts committed under such similar and peculiar circumstances as to point to the same person as the perpetrator of all, evidence of the accused's connection with the previous acts will be admissible to prove his connection with the act charged. Parker, C. J., in *People* v. *Molineux*, 168 N. Y. 264, 344, 61 N. E. 286, 313; *Frazer* v. *State*, 135 Ind. 38, 34 N. E. 817. This would seem clearly so where the evidence is introduced to explain the defendant's own statement, referring to the previous occasions and indicating that he had a similar design in mind. See *Commonwealth* v. *Choate*, 105 Mass. 451. For this purpose all the testimony of the witness as to what took place on the other occasions when he had watched for the defendant was admissible. But the defendant's statement, "Of course you know I ain't built like other men," was relevant only through the inference to character, and the defendant's disposition to commit the crime charged cannot be shown even by his own admissions. *Rex* v. *Cole*, 1 Phillips, Evidence (4th Am. Ed.) 181; *People* v. *Bowen*, 49 Cal. 654; *Lucas* v. *Commonwealth*, 141 Ky. 281, 287, 132 S. W. 416, 419. But since there was no specific objection to the admission of this statement, it cannot be taken advantage of on appeal. *State* v. *Stanton*, 118 N. C. 1182, 24 S. E. 536; *Ray* v. *Camp*, 110 Ga. 818, 36 S. E. 242. See also, 24 HARV. L. REV. 148.

INSURANCE — CONSTRUCTION OF PARTICULAR WORDS AND PHRASES IN STANDARD FORMS — STANDARD MORTGAGE CLAUSE AS PROTECTION AGAINST OWNER'S NEGLECT TO FURNISH PROOF OF LOSS. — A mortgagor took out insurance payable to the mortgagee as his interest might appear. The policy provided that "the insured" should furnish proofs of loss within a certain time, and that no act or neglect of the mortgagor should invalidate the mortgagee's right to recover. The mortgagor failed to furnish proofs of loss within the prescribed time. *Held*, that the mortgagee's recovery is not barred by this neglect. *Riddell* v. *Rochester German Ins. Co.*, 89 Atl. 833 (R. I.).

If the mortgagee's right is not protected by a provision in the policy, it will be defeated by any act or neglect which invalidates the mortgagor's contract. *Baldwin* v. *Phoenix Ins. Co.*, 60 N. H. 164; *Shapiro* v. *Western Home Ins. Co.*, 51 Minn. 239, 53 N. W. 463. The standard mortgage clause has sometimes been interpreted as making the mortgagee a peculiarly privileged beneficiary of the contract with the mortgagor. See 23 HARV. L. REV. 311. Under this analysis any misconduct of the mortgagor which rendered the contract void in its inception, would prevent any right in the mortgagee from arising. *Hanover Fire Ins. Co.* v. *Nat. Ex. Bank*, 34 S. W. 333 (Tex. Civ. App.). But the purpose of the clause was to protect the mortgagee against misconduct of the mortgagor at the inception as well as during the existence and after the termination of the risk. See *Syndicate Ins. Co.* v. *Bohn*, 65 Fed. 165, 176, 177. This result is achieved by the weight of authority, on the theory that the clause creates a separate contract of insurance with the mortgagee. *Magoun* v. *Fireman's F. Ins. Co.*, 86 Minn. 486, 91 N. W. 5; *Bacot* v. *Phoenix Ins. Co.*, 96 Miss. 223, 50 So. 729. It would seem further that the mortgagee is not "the insured" within the meaning of the clause, requiring proof of loss in a specified time. The duty would be highly unreasonable if imposed upon one who might not know that there had been a fire until after the expiration of the period set. This, as the principal case holds, is one of the neglects against the effect of which the mortgagee's contract protects him. He should be entitled to recovery on proof of loss in a reasonable time after learning of it. See *Union Institution for Savings* v. *Phoenix Ins. Co.*, 196 Mass. 230, 235, 81 N. E. 994, 996.

INTERSTATE COMMERCE — CONTROL BY STATES — REGULATION OF INTERSTATE SHIPMENT OF INTOXICATING LIQUORS: WEBB-KENYON ACT. — In a suit